

The opinion being written in support of the decision being entered today is not binding precedent of the Board.

By: Carol A. Spiegel
Administrative Patent Judge
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Paper 188

Filed: November 21, 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

WANDA A. CROMLISH,
BRIAN P. KENNEDY, GARY O'NEILL, PHILLIP J. VICKERS,
ELIZABETH WONG and JOSEPH A. MANCINI

Junior party,
(Patent 5,543,297)

v.

DONALD A. YOUNG,
MICHAEL K. O'BANION and VIRGINIA D. WINN

MAILED

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PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Senior party,
(Application 08/487,752)

Patent Interference No. 104,289

ORDER REDECLARING INTERFERENCE
(37 CFR § 1.611)

In view of the decisions on (a) Cromlish preliminary motions 1, 2 and 4-7 (Paper 171), (b) remaining preliminary and other motions (Paper 174), (c) reconsideration of Cromlish preliminary motions 1, 2 and 4-7 (Paper 181), and (d) reconsideration of

Cromlish preliminary motions 9 and 14-16 and Young preliminary motion 9 (Paper 184),
it is

ORDERED that the interference is redeclared as follows:

1. The count remains the same (Paper 1, p. 41):

Count 1

Claim 1 of 08/487,752 (Young) or claim 16 of 5,543,297 (Cromlish).

2. Cromlish reissue application 09/731,632 (Cromlish '632) is added to the interference.¹

3. The claims of the parties are:

Cromlish '297: 1-21

Cromlish '632: 1-16, 18-27

Young '752: 1-28, 30, 32-58²

4. The claims of the parties that correspond to Count 1 are:

Cromlish '297: 16-21³

Cromlish '632: 16, 18-27⁴

Young '752: 1-9, 12-22, 25-28, 30, 32-38 and 58

¹ Paper 184, pp. 14-16; Paper 180, Paper 187.

² Paper 185 entered Young Amendment Paper 176 which added Young claim 58 (i.e., proposed claim 76 of Young preliminary motion 1 (Paper 27)).

³ Cromlish '297 claims 17 and 20-21 are unpatentable (Paper 174, pp. 82-83; Paper 184, pp. 12-14).

⁴ Since Cromlish '297 reissue claims 20 and 21 are the same as originally issued Cromlish '297 claims 20 and 21, we recommend that reissue claims 20 and 21 also be rejected as unpatentable under 35 U.S.C. § 112, second and fourth paragraphs, for the same reasons as originally issued Cromlish '297 claims 20 and 21. 37 CFR § 1.659(a).

5. The claims of the parties that do not correspond to Count 1, and therefore, are not involved in the interference on the issue of priority, are:

Cromlish '297: 1-15

Cromlish '632: 1-15

Young '752: 10, 11, 23, 24, and 39-57

5. Cromlish '297 is accorded benefit for the purpose of priority as to Count 1 of:

(1) U.S. application 07/994,760, filed December 22, 1992.

6. Cromlish '632 is accorded benefit for the purpose of priority as to Count 1 of:

(1) U.S. application 08/064,271, filed May 6, 1993 and

(2) U.S. application 07/994,760, filed December 22, 1992.

7. Young '752 is not entitled to benefit for the purpose of priority as to Count 1 of any of its earlier filed continuation-in-part applications 08/231,456; 08/054,364; 07/983,835; and 07/949,780. Therefore, Young '752 is only entitled to the June 7, 1995 filing date of its involved Young '752 application for the purpose of priority as to Count 1 (Papers 171 and 181).

8. Since the priority benefit date of Cromlish (December 22, 1992) is earlier than the priority benefit date of Young (June 7, 1995), the order of the parties is reversed thereby making Cromlish senior party.

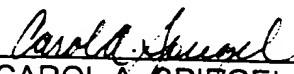
FURTHER ORDERED that, to the extent applicable, the procedures set forth in the attached STANDING ORDER are in effect for the remainder of the interference.

FURTHER ORDERED that the caption of papers filed in the remainder of the interference shall be the caption as set forth in the appendix to this ORDER.

FURTHER ORDERED that within **14 (fourteen) days** of the date of this ORDER, each party shall either: (1) file a statement indicating that it is relying on the preliminary statement it has already filed in the interference for the subject matter of Count 1 or (2) file a new preliminary statement for the subject matter of Count 1.

FURTHER ORDERED that a conference call is scheduled for **December 2, 2002 at 10:00 a.m.** to set times for taking action during the priority phase of the interference. The call will be initiated by the PTO.

FURTHER ORDERED that time period 16 for taking action during the priority testimony phase of the interference is set for **August 15, 2003**.


CAROL A. SPIEGEL
Administrative Patent Judge

Date: November 21, 2002
Arlington, VA

Enc.: Copy of STANDING ORDER

APPENDIX

Filed on behalf of: Party _____ Paper No. _____
By: Name of lead counsel, Esq.
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UNITED STATES PATENT AND TRADEMARK OFFICE (Administrative Patent Judge Carol A. Spiegel)

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Senior party,
(Patent 5,543,297 and
Reissue Application 09/731,632)

Patent Interference No. 104,289

TITLE OF PAPER

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